WILKINSON BARKER KNAUER LLP

1800 M STREET, NW
SUITE 800N
WASHINGTON, DC 20036
TEL 202.783.4141
FAX 202.783.5851
WWW.WBKLAW.COM
DAVID A. O'CONNOR
202.383.3429
DOCONNOR@WBKLAW.COM

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VIA ELECTRONIC FILING (ECFS)

Marlene H. Dortch, Esq.
Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

RE: **EX PARTE PRESENTATION**
Misuse of Internet Protocol (IP) Captioned Telephone Service; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities
CG Docket Nos. 13-24, 03-123

Dear Ms. Dortch:

Hamilton Relay, Inc. ("Hamilton"), by its counsel, submits these brief comments in response to the draft item on Internet Protocol Captioned Telephone Service ("IP CTS") which has been circulated for tentative consideration by the Commission at its June 2018 open meeting.[1]

All ASR Issues Require Further Rulemaking

The draft item includes a *Declaratory Ruling* which would authorize Automated Speech Recognition ("ASR") as a reimbursable form of IP CTS.[2] To make such a profound change, in the absence of appropriate notice and comment, not only violates the Administrative Procedure Act, 5 U.S.C. § 553, but amounts to an abrupt and unexplained departure from its prior practice and frankly could cause harm to the users of IP CTS. Importantly, the Commission did not seek comment on whether to authorize ASR as a compensable form of TRS, in the 2013 *Further Notice of Proposed Rulemaking*[3] or elsewhere. Moreover, although the *Declaratory Ruling*

[1] FCC-CIRC1806-10 (May 17, 2018) ("Draft Item").

[2] *Id.* ¶ 46.

[3] *Misuse of Internet Protocol (IP) Captioned Telephone Service; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, (continued)...

discusses the process for applying for certification to provide IP CTS by means of ASR, it appears to authorize currently certified providers of IP CTS to begin offering ASR services without subjecting such services to oversight to ensure that they are offered consistently with the Commission's regulations and the requirements of Section 225.[4] This poses a risk of harm to users of IP CTS. For example, the draft item does not even acknowledge that 911 calls using ASR are an untested and potentially unreliable means of communicating with emergency officials. Emergency call handling through the use of ASR is an issue that must be addressed in the second *Further Notice of Proposed Rulemaking* ("*Further Notice*"), along with compensation and other issues, before ASR is permitted for general use by the public.

ASR has much potential for use with IP CTS. That potential includes technological improvements for consumers as well as cost savings for the TRS Fund. Hamilton and its subcontractor have spent significant resources to understand this potential and will continue to share the results of this work with the Commission. This information will prove to be extremely valuable to all stakeholders because it will be the first time that data regarding actual consumer use of ASR in an IP CTS environment will be shared publicly. Unfortunately, the only data the Commission has to date to analyze whether ASR use may be viable for IP CTS is one very small study in a controlled environment.[5] Using only this very small subset of data to make such a life-impacting decision for the consumers of IP CTS is unprecedented. In addition, the draft *Declaratory Ruling* appears to rely on conclusory statements in that one government-contracted study of ASR – a study that has not been subjected to peer review.[6] This is not an adequate

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Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 13420 (2013) (subsequent history omitted). Nor can the authorization of ASR be deemed a permitted "logical outgrowth" of that proceeding, because ASR was not even mentioned in that proceeding. *Environmental Integrity Proj. v. EPA*, 425 F.3d 992, 996 (D.C. Cir. 2005) ("[A]gencies [may not] use the rulemaking process to pull a surprise switcheroo on regulated entities."); *see also International Union, United Mine Workers of Am. v. Mine Safety & Health Admin.*,407 F.3d 1250, 1261 (D.C. Cir. 2005) (Agency rule vacated where agency "did not afford a ... public notice of its intent to adopt, much less an opportunity to comment on, [a decision]."); *Sprint Corp. v. FCC*, 315 F.3d 369, 375–76 (D.C. Cir. 2003) ("[A]n agency may make changes in its proposed rule on the basis of comments without triggering a new round of comments, at least where the changes are a 'logical outgrowth' of the proposal and previous comments" but "[s]uffice it to say that there can be no 'logical outgrowth' of a proposal that the agency has not properly noticed"); *Fertilizer Inst. v. EPA*, 935 F.2d 1303, 1312 (D.C. Cir. 1991) (agency "cannot bootstrap notice from a comment").

[4] Draft Item, ¶ 63.

[5] Draft Item ¶ 47 & n.154.

[6] As the Commission is aware, Hamilton and its subcontractor have been conducting confidential real-world ASR trials and will be submitting additional data to the Commission in the near future about those trials (and will make them available for peer review). However, to date those trials (continued)...

record upon which to base the *Declaratory Ruling* and it stands in sharp contrast to the record basis for approving other forms of TRS. The Commission should avoid rushing into ASR without the benefit of additional study and affirmation in the record that ASR produces functionally equivalent service for users.

Such information can and should be sought in the *Further Notice*. Following the conclusion of that rulemaking proceeding, any applications by providers proposing to rely exclusively on ASR should be subject to a notice and comment period.

Finally, the draft Declaratory Ruling suggests that the TRS Fund Administrator ("Administrator") should be responsible for determining the compensation for ASR providers, based on an apparently subjective determination by the Administrator that such payments are "justified."[7] Hamilton submits that the record is devoid of any indication that the Administrator is equipped to make such determinations, and whether such determinations by a contracted entity would be appropriate. Any proposal to permit the TRS Fund Administrator to carry out such functions on behalf of the Commission should be addressed in the *Further Notice*.

Consumers Deserve Prompt Resolution of Service Quality Issues

The draft item proposes that all consumer service quality issues should be relegated to a Notice of Inquiry ("*NOI*"),[8] a procedural step that is at odds with the importance of these issues to consumers, and the Commission's apparent rush to authorize ASR.[9] Hamilton believes that service quality issues have been sufficiently vetted through the Disability Advisory Committee and other fora that they are now ready for proposed rules. Accordingly, the provisions of the draft *NOI* should be moved to the *Further Notice*.

Harmful Rate Cuts Will Affect Quality of Service

Hamilton desires to work with the Commission to find a rate methodology that meets the needs of all stakeholders. An arbitrary 10% cut is very difficult for any industry to manage, especially in this situation given the very short nature in which this particular change will take place. Hamilton also recognizes that it is difficult for the Commission to understand this given it

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have reached conclusions that do not support the findings in the MITRE report. Additionally, Hamilton believes that other providers have been conducting similar ASR trials, and all of this information should appropriately be analyzed in the context of the *Further Notice*.

[7] *Id.* ¶ 64.

[8] *Id.* ¶ 150.

[9] Indeed, the adoption of service quality and performance requirements, particularly as they relate to emergency call handling requirements, are prerequisites to authorizing the general use of ASR for IP CTS.

has never received, much less examined, all of the costs for IP CTS. Hamilton continues to favor competitively-based rates instead of the cost-based methodology that has been used in analyzing IP CTS rates to date as this process does not capture the true costs of providing the service. Hamilton looks forward to working with the Commission to establish a rational, permanent rate methodology for IP CTS. However, Hamilton believes that an additional rate cut to $1.58 per minute, as proposed in the draft item, would create serious market disruption and likely would adversely affect quality and availability of service. Hamilton urges the Commission to revise the draft item to establish a two-year interim rate of $1.75 per minute from July 1, 2018 to June 30, 2020, or until a permanent rate methodology has been implemented for IP CTS.

Hamilton appreciates the opportunity to submit these comments on the draft item.

This filing is made in accordance with Section 1.1206(b)(2) of the Commission's rules, 47 C.F.R. § 1.1206(b)(2). In the event that there are any questions concerning this matter, please contact the undersigned.

Respectfully submitted,

WILKINSON BARKER KNAUER, LLP

/s/ David A. O'Connor
Counsel for Hamilton Relay, Inc.

cc (via email): Nirali Patel
Amy Bender
Travis Litman
Jamie Susskind